

Testimony to House Committee on Government Reform, February 10, 2005

“An Assessment of ONDCP’s Budget Concept”

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Mr. Chairman: I am pleased to be here today to speak about the workability of the current Office of National Drug Control Policy budget concept. I am a professor of Public Policy and of Criminology at the University of Maryland and a researcher at the RAND Corporation, but this testimony represents my own opinions, not those of either the University or RAND.

My testimony will deal not with the proposed 2006 drug budget, whose details I have not studied, but with how well the current ONDCP budget concept serves Congress and the public as a representation of federal drug policy. The agency made major procedural changes in 2003, arguing that the old budget was not helpful for policymakers. I argue below that ONDCP’s changes, if properly implemented, could generate a document useful for ONDCP’s purpose. However there still remains a need for ONDCP to prepare a more comprehensive document that would fully represent what the federal government spends to reduce the nation’s drug problems and provide the basis for fully informed policy decisions. Moreover, there were problems in the implementation of the new procedures that resulted in the omission of some major policy items.

Background

Let me start with a bit of background. Drug budgets have been a staple of the drug policy debate since 1973. By the time that ONDCP began operating in 1989, the methodology underlying the drug budget was well-established. Specifically, the budget was divided between demand-side programs (prevention and treatment) and supply-side

programs (domestic and international enforcement), a division that had already provided a major battleground for public debate throughout the 1980s. Congress initially required statutorily that ONDCP report the division of expenditures between demand and supply reduction; while it continues to report this division, it gives the division less emphasis. Federal agencies were given guidelines to produce defensible estimates of how much they were spending on drug control under different program categories to reduce U.S. drug problems. As a result, the length of the budget document accompanying the release of the annual *National Drug Control Strategy* came to exceed the length of the strategy itself.

The drug budget served a number of purposes. For many readers, it provided an important description of drug policy. That policy, of course, is the set of programs and laws governing drug use and distribution. It has many dimensions, such as the number of persons in treatment, the share of school children age 10–14 receiving drug prevention programs, and the number of persons prosecuted for selling drugs. Much of that policy is the result not of federal decisions but of the independent decisions of state and local governments. Still, the federal government has been an important actor in most aspects of policy. In short, the federal budget, giving both total federal expenditures and the composition of such expenditures, was one important part of the description of national drug policy.

In addition to serving this descriptive role, the drug budget served more functional goals as well. In the absence of much evaluation of individual programs, the drug budget was often interpreted as providing a broad sense of how well the federal government was doing in its drug control decisions. For example, if interdiction expenditures were rising

and more drugs were flowing across the border at lower prices, then a question might be raised about whether the interdiction program was being effectively operated. In the 1990s, ONDCP constructed an elaborate performance measurement system linked to the budget.

Until 2002, the published budget aimed to be as comprehensive as possible about federal expenditures. Specifically, it included any expenditure that had a link to drug control. The resulting figures had limitations as a tool for policy decisions. To pick an easy and high-profile example, consider Bureau of Prisons federal prison expenditures, a major item in the old budget. Given the flow of convicted offenders from the courts, two things determine these expenditures: (1) existing laws, namely the mandatory minimum sentences for drug offenders in federal court; and (2) the guidelines established by the United States Sentencing Commission. If Congress wishes to spend less on incarcerating convicted drug offenders, it will have to reduce mandatory minimum sentences and/or direct changes in the guidelines. Neither of these are options for ONDCP in its budget certification and policy role. Thus, Bureau of Prisons expenditures for incarcerating drug offenders did not represent a number that ONDCP could influence.

Medicaid presents the same budgeting problem. As an entitlement program, there is little direct budget flexibility. The real power to address substance-abuse issues in Medicaid is done through other policy levers. Change the coverage of the entitlement and the dollars follow to populations that are at high risk of substance abuse; for example, one might provide coverage for prisoners in their first three months after release, if they are unemployed.

These are two examples of programs that have been excluded now as being passive consequences of decisions about drug policy made earlier and not subject to revision on an annual basis.

Changing the Budget Rationale

In 2003, ONDCP developed a new budget concept. I quote in full the only statement to my knowledge that has been provided, at least until today, to justify the change. “Rather than being based on estimates derived after decisions were made, as was the case in previous years, with few exceptions this budget reflects actual dollars identified in the congressional presentations of drug control agencies that accompany the annual submission of the President’s budget. Additionally, the budget reflects only those expenditures aimed at reducing drug use rather than, as in the past, those associated with the consequences of drug use. (The latter are reported periodically in *The Economic Costs of Drug Abuse in the United States*.)” (p.6, 2003 *National Drug Control Strategy*).

The two distinctions proposed are potentially reasonable ones. Let’s begin with the distinction between programs aimed at reducing drug use and those aimed at ameliorating consequences. Some other nations, most articulately the United Kingdom, have used a different terminology to make a similar separation. They refer to proactive and reactive expenditures.

A recent UK exercise provided definitions and examples: “Proactive budget and spend is that which is aimed at tackling the causes of the drug problem. Examples include supply reduction, prevention and anti-drugs education. Treatment is also proactive although, by definition, reacting to an existing problem rather than preventing it at source.” “Reactive budget and spend is that which results from the drugs problem but

which, of itself, does little, if anything to solve it or address the underlying causes.

Examples include most (but by no means all) police enforcement costs, prison accommodation and court costs.” For accountability purposes, agencies were required to focus on the proactive items in this exercise.

However, the resulting “proactive” document is only one of two separate budgeting exercises that the British government undertakes. Indeed, to my knowledge, the proactive document has never been published, and it deals with much less than half of total drug control spending. The British government also occasionally publishes a comprehensive budget that includes “reactive” programs. This broader budget breaks down all targeted expenditures and is very reminiscent of the approach developed by ONDCP in the 1990s. The targeted funds are divided on the basis of goals. The four enumerated objectives are to (1) reduce the proportion of persons under 25 reporting use of Class A drugs; (2) reduce the levels of repeat offending among drug misusing offenders; (3) increase drug treatment enrollment by drug misusers; and (4) reduce the availability of Class A drugs. In each case, the target was a 25 percent change by 2005. Note that Goal 2 is about consequences rather than use itself.

The other criterion offered by ONDCP in 2003 for program inclusion is harder to interpret and understand. “[W]ith few exceptions this budget reflects actual dollars identified in the congressional presentations of drug control agencies that accompany the annual submission of the President’s budget.” ONDCP’s new approach is to focus on agencies and programs that are narrowly focused on supporting drug control activities. Agencies with a small drug-related workload or with programs addressing a wide range

of issues were removed from the budget unless funding could be reorganized and displayed to show drug funding in discreet “decision units.”

Done properly, these two changes would allow ONDCP to focus its attention on programs that specifically target drug use rather than its consequences and that are not buried inside much larger programs that have much broader goals. That seems a reasonable enough exercise for the agency’s own purposes.

However, there are two problems. First, as implemented, the new budget does not seem to meet the criteria laid out for it. And second, and perhaps more important, there is a need for a more comprehensive budget for broader public purposes.

Problems with Implementation

The major difference between the two budgets (as shown by the comparisons provided for fiscal year 2003) is the exclusion of almost all costs associated with the incarceration of federal drug prisoners and the exclusion of most prosecutorial expenditures. These amounted to about \$4.5 billion, according to estimates by John Carnevale, former ONDCP budget director. The only Bureau of Prison expenditures that are included in the new budget are those that try to lower drug abuse among prisoners. Thus, the Bureau appears, by function, only as a treatment agency.

However, doing this seems odd. Incarceration and prosecution are intended to reduce drug use by affecting the supply side of the market. The vast majority of federal drug inmates are there for dealing offenses rather than for using or possessing drugs. Incarceration is what makes investigation, which *is* included in the budget, effective as a method for deterring drug dealers. Investigation does impose other costs on the drug distribution system through seizure of drugs and assets. However, the bulk of the costs

that federal enforcement imposes on the drug distribution system result from incarceration rather than from these other penalties. Thus, if one seeks to estimate the total costs of federal efforts to reduce drug use, then both prosecution and incarceration should be included, not just prosecution, as is now the case.

Moreover, the Bureau of Prisons is not an agency for which drug control is buried in a much broader mission. The majority of BoP inmates are drug offenders. Thus, even by the second of the tests offered by ONDCP, namely the explicitness of the drug control role, its expenditures could be included.

I have noted earlier that incarceration can be regarded as a passive consequence of standing law rather than as the product of active policy decisions by ONDCP. That is a reason for distinguishing BoP expenditures for analytic purposes, because ONDCP cannot exert much influence on them. However, it is not a reason for excluding them altogether from the federal drug budget that is reported to Congress as a measure of what is spent at the federal level to control the drug problem.

A similar question can be raised about the exclusion of most prosecutorial expenditures. Prosecution precedes incarceration and is also a critical component of the drug enforcement system. The logic for including incarceration costs in federal supply control efforts applies equally to prosecution. ONDCP may reasonably perceive prosecutors as essentially reactive, having to deal with the flow of defendants brought to them by the investigative agencies and not having a lot of policy choices. However, it is of interest to Congress and the public.

Implementation of the second change has also caused problems of exclusion and over-inclusion. For programs that are 100 percent drug-related, this new approach of

choosing only agencies with budgets that can be labeled as drug control poses no problems. However, most agencies with drug control responsibilities have much broader missions and lack specialized units. This can affect the drug budget and ONDCP's ability to coordinate policy development in two ways. First, some agencies are required to report non-drug funding as part of their budgets. This means that funding that has no drug-related nexus is included in the ONDCP drug budget. In 2003, \$571 million was added to the drug control budget because the funds happened to be included in programs that ONDCP retained in the drug budget. For example, in SAMHSA, adult alcohol funding and funds supporting program management staff for mental health activities were included in the budget.

Conversely, ONDCP discontinued the scoring of many programs because their drug-related activities could not be easily identified in, or gathered together as, line items for budget reporting purposes. IRS presents an interesting example. That agency was dropped from the drug budget in fiscal year 2004 because a consolidated "line item" could not be identified for the drug-related efforts, even though their money laundering investigations would include many targeted on drug traffickers. The fiscal year 2006 budget re-establishes the IRS as a drug control agency because the High Intensity Drug Trafficking Area program and the Organized Crime Drug Enforcement Task Forces are now in agency budgets (as opposed to transferring the funds from the HIDTA and OCDETF accounts). The IRS conducts similar investigations with the \$56 million that is being included by ONDCP in fiscal year 2006 and the roughly \$40 million (the level last reported by ONDCP in 2002) that has been part of the agency's base funding level. No IRS expenditures were included in the intervening years.

The Need for a Comprehensive Budget for Broader Public Purposes

The above argument shows that as implemented, the new budget does not seem to meet the criteria laid out for it. But even if there were no implementation problem, there is still a need for a comprehensive budget to meet broader public purposes. For example, in addition to being required to certify about how adequate the budget is for each drug control program, ONDCP is required to certify drug program policy changes. ONDCP has only informal mechanisms established to review and approve of policy changes. By removing programs from the drug budget, and especially those like Medicaid (\$500 million estimated for fiscal year 2003), ONDCP loses sight of the programs and the leverage of the budget certification process that could be used to re-enforce efforts to direct policy. For example, Medicaid might be a major treatment funder; under the new doctrine, Congress would not aware of this.

Also, ONDCP notes that many costs not included in the budget are included in *The Economic Costs of Drug Abuse in the United States*, which is an occasional publication. However, that report provides no detail about specific federal prosecutorial and correctional costs, just a total; moreover, the researchers who create the *Economic Costs of Drug Abuse in the United State* document are much less well positioned by training or access to provide the kind of interesting detail that was in previous budgets. More complete estimates are provided, but these estimates appear in an essentially academic publication, one that has a long lag time. In particular, the ONDCP web site currently contains a 2001 report presenting estimates through 1998 (with projections through 2001). As an academic and researcher myself, I suggest that this kind of delay is almost an inevitable consequence of the contract research process.

Recommendations

The reformulated ONDCP budget concept, if properly implemented, can serve a useful purpose. It focuses the agency on what it can influence. However, that budget document needs to be supplemented by the recreation of the old, more comprehensive budget, which can inform the broader debate about drug policy. That will allow the public and Congress to better understand the costs of current policy and help them make more informed decisions about issues that are important but lie outside of ONDCP's jurisdiction.

It would be even more useful if there were also regular estimates of expenditures by state and local governments. The only study that estimated such expenditures (which came out in 1991) showed total expenditures that were almost as much as those of the federal government. It is plausible, given the growth in the number of drug offenders in state prison, that this remains true, but that is very speculative. Nonetheless, it is clear that state and local governments spend many billions of dollars on drug control and that the federal budget is an inadequate characterization of either the level or the composition of U.S. drug policy expenditures. Estimating these figures would be a complex but feasible research undertaking. If Congress wishes to have a full understanding of drug policy in the nation and the role that federal programs play, it needs this broader set of figures.

I am happy to answer questions.